

## AMENDED June 10, 2013

Present by telephone

## **Charter Review & Revision Board**

Members: Appointed by:

Stephen Zack, Esq., Chair
Aaron Perry, Vice Chair
Scott Diffenderfer
Jacqueline Lalonde

Mayor Matti Herrera Bower
Commissioner Jerry Libbin
Commissioner Jorge R. Exposito
Commissioner Michael Góngora

Rick Kendle Commissioner Edward L. Tobin
Alex Fernandez Commissioner Deede Weithorn

Richard "Rick" J. Preira Commissioner Jonah Wolfson Absent

## Staff:

Debora Turner, First Assistant City Attorney Rafael E. Granado, City Clerk Liliam Hatfield, OAV, City Clerk's Office Jorge Gomez, Assistant City Manager Aleksandr Boksner, Senior Assistant City Attorney

# Members from the public:

Terry Bienstock Robert Wolfarth Brad Ugent

#### MINUTES

Monday, June 3, 2013 at 4:30 p.m. 1755 Meridian Avenue, 5<sup>th</sup> Floor Conference Room.

Meeting called to order by Chairman Zack at 4:33:32 p.m.

Roll call by City Clerk Rafael E. Granado. All present with the exception of Member Preira; Member Lalonde was present via telephone.

- Accept Minutes Of The May 6, 2013 Charter Review & Revision Board Meeting.
   ACTION: Motion made by Member Fernandez; seconded by Member Perry to approve the minutes; Approved by acclamation. Absent: Member Preira.
- 2. Presentation By Debora Turner, First Assistant City Attorney, List Of Charter Provisions Identified By The City Attorney For Review.

Debora Turner, First Assistant City Attorney, presented Sections of the Miami Beach Charter recommended by the City Attorney's Office for review and consideration by the Board as far as Charter Amendments.

**Section 1.03 - Powers of the City**. This item was ruled "out of order" at the last meeting, but certain City properties are subject to referendum and this is something that the Board might want to consider.

Member Fernandez asked about the definition of waterfront and oceanfront properties and Assistant City Manager Jorge Gomez explained.

Member Fernandez explained that in the research he has done from previous Charter Reviews, properties that front the Collins Canal are based on the erosion control line, and he asked to make sure what the intent is in protecting certain properties. He wants to know if the properties in front of the Collins Canal are protected and not be jeopardized in the future, such as the Botanical Garden. Discussion held. One of his recommendations is regarding bridges over City owned property and underground structures that may be permanent, such as that proposed for the expansion of the Convention Center.

Mr. Gomez explained that in 2003, a map was designed showing all the City properties inclusive. He also stated that several months ago the City Commission requested an easement to utilize the air rights connecting two properties owned by the same entity for a hotel. They requested an aerial easement; there was also a request for an underground easement for a parking garage connected. The Commission granted both. The question is do they make every conceivable exchange of land to require a referendum or keep what is existing, which is to have an incredible super majority of 6/7 vote of the Commission in addition to a 4/7 vote of the Planning Board. Discussion continued regarding easements and bridges. He suggested considering making a higher threshold if granting an easement over public streets versus an alley.

Member Fernandez agreed to put proposed language to the Commission with an extra layer of approval for bridges or over alleys, as he is concerned in keeping with the character of the City. Discussion continued.

**Section 2.02 -Term and Compensation**. Presently the terminology refers to salary and compensation but not in a consistent way; and the Board might want to clarify what is meant by salary or full compensation, including other benefits.

Chairman Zack asked for a straw vote on salary versus compensation and for the definition of compensation; is it inclusive with salary, all benefits and pension?

Debora Turner, First Assistant City Attorney, explained that it is defined as employees of the City, Legal suggests changing compensation to salary, since the salary is what is provided in the Charter, or if changed to compensation, then provide for other things such as expense accounts.

Chairman Zack stated the real issue is what kind of compensation they receive; he thinks compensation is how they benefit; he would increase both the salary and compensation, but he requested to know the compensation received.

Member Kendle suggested making it simple. Discussion continued.

Vice-Chairman Perry suggested finding out exactly what the package is and then the Board can discuss. **Rafael E. Granado and Debora Turner to handle.** 

**Section 2.03 – Powers of the city commission**. This section deals with the City Auditor or a potential Inspector General. Page 75 of the Agenda, describes the duties of an Independent City Auditor. She explained that if the Board wants to consider other duties for the Inspector General, Mr. Boksner from the City Attorney's Office would answer questions.

**Section 2.07 – Vacancies in city commission**. The term *vacancy* may not be in line with the practices and procedures are of the city commission. The concern is that sometimes candidates for city commission will resign to run for other seats, for example in July for a November election. The City prefers to hold elections concurrent with a November election. The practice that has been engaged in with regard to holding an election in November is that the City piggybacks onto other elections for cost-savings purposes, rather than spending \$200,000 for stand-alone elections. The Legal Department suggests correcting language to clarify that if an individual decides to resign to run for another seat, that an election be held concurrently in November with other elections. Ms. Turner distributed two City Attorney's opinions on the issue for consideration.

Discussion held regarding vacancies in city commission.

Rafael E. Granado, City Clerk, in answering Chairman Zack's questions, explained that usually vacancies occur in November. The resign to run, if done timely, is effective on the date the individual is elected (November); therefore, the vacancy does not occur until that election is closed. The question is when can the Clerk ask the Elections Department and have candidates come in for a vacancy that has not occurred. This is what needs to be cleared up.

Chairman Zack asked if they are legally able, if a person has resigned to run for another office, at the next scheduled election there will be an election for that seat, even though technically a nanosecond has to go by before there is a vacancy.

Ms. Turner explained that under the State resign-to-run law, whatever the City provides in the Charter for that procedure would be what controls. That is the reason for the clarification in the Charter. Discussion continued.

Mr. Granado informed the Board that the costs are approximately \$22,000 when the City piggybacks; if the City does not piggyback is \$200,000. Discussion held.

Section 3.01 – City attorney; duties generally; appointment of personnel.

Section 4.01 – City manager – Compensation and qualifications

Section 4.03 – City clerk – Appointment and compensation

Ms. Turner explained that the terms of compensation and salary are used in these three provisions and Legal recommends that they be defined consistently throughout.

**Section 4.02 – City Manager – Functions and powers.** Ms. Turner explained that at the present time City department directors are subject to the consent of the City Commission, and Legal proposes <u>for consideration whether</u> that Assistant City Managers <u>should</u> also be subject to the consent of the City Commission since, in many instances, Assistant City Managers are overseeing department directors.

**Section 6.03 – Qualifying.** Currently a person must live at least one year in the City prior to qualifying, and Legal recommends <u>for consideration</u> that a <u>the issue of a</u> different qualifying time for residence in the City. She explained that the County you , for example, to qualify for a County commission seat, one must be a resident with one year <u>for six months</u> in the district <u>and 3 years in the County</u>, but <u>and for the office of County Mayor, one must be</u> a resident of the County for three years. Discussion held.

Member Fernandez stated that these are important issues that he has comments on, and suggesting letting the public in attendance speak on the item Miami Beach United.

**NOTE:** Rafael E. Granado, City Clerk, for the record, stated that at the next agenda the discussion topic would include the Charter Provisions identified for review as recommended by the City Attorney's Office. (Sections 2.02, 2.03, 2.07, 3.01, 4.01 and 4.03). **Rafael E. Granado to place on the June 10, 2013 CRB Agenda.** 

In answering Chairman Zack's question regarding Section 1.03-Powers of City, Ms. Turner explained that the Board might want to review the last sentence of the paragraph. Discussion held regarding management agreement and referendum requirements.

Jorge Gomez, Assistant City Manager, stated that a management agreement can be used to circumvent the intent of the Charter provision, and added that the Board may need to create language to read that if someone enters into a management agreement using City owned property, the Board may want to add language with a clear definition. Discussion continued regarding the Convention Center.

#### Handouts for Item 2:

- 1. Letter to Commission from Jose Smith, City Attorney, to Mayor Dermer and City Commission, dated June 7, 2006, RE: Filling Vacancy on City Commission
- 2. Letter to Commission from Jose Smith, City Attorney, to Mayor Matti Herrera Bower and City Commission, dated March 21, 2008, RE; Filling Possible Vacancy on City Commission.

## **Discussion on the Miami Beach Convention Center**

In answering Jorge Gomez, Assistant City Manager, explained that the City Commission expressed the sentiment that regardless of the precise language of the Charter and their technical components and requirements, the City Commission feels that when they choose a developer, they will put the question out to the community, regardless of what the technical requirements are.

3. Presentation By Miami Beach United Of Proposed Charter Amendment To The Miami Beach Citizens' Bill Of Rights (Resident Association Bill Of Rights). (See Attached Item 3) 5:43:56 p.m.

Terry Bienstock made a presentation. He explained that the comments expressed at the last meeting had been incorporated in the proposed amendment. In addition, the neighborhood association members met at the golf course with good attendance by residents, candidates for the 2013 election and City Commissioners.

Chair Zack asked how he is giving official recognition as to different organizations.

Mr. Bienstock stated that an official recognized association must be organized, inclusive, open to residents of the area, and officially recognized association, and they will contemplate a separate ordinance implementing this that will set up the Clerk's Office as repository to have a form and determine under the code provisions if they are legitimate neighborhood associations. Discussion held.

Chairman Zack asked what constitutes organized and what constitutes inclusive, and most importantly officially recognized. He suggested looking at what the ordinance will look like, and if organization residents will need to sign official papers. Discussion continued.

Mr. Bienstock stated that defining what a neighborhood association is, is a statutory issue since it changes all the time, and can be liberalized by the Commission at times. Discussion held. He explained that as of now they have no standing or the rights to appeal a denial, to attend, cross-examine witnesses, because under the Code they are not recognized.

Member Lalonde suggested having the City require recognizing organized neighborhood associations.

Chairman Zack suggested defining what an "organized association" is. Mr. Bienstock stated that their group discussed clarifying or enhancing individual rights, the right to be heard and the right to be noticed. **Mr. Bienstock to provide.** 

**ACTION:** Motion made by Member Kendle to have a special meeting having to do with Bill of Rights and discuss all related proposals; seconded by Member Fernandez; by acclamation. Absent: Member Preira. **City Clerk Rafael E. Granado to handle and to place on the agenda at a future meeting.** 

- 4. Items Requested To Be Discussed On May 6, 2013 By Alex Fernandez, Charter Review & Revision Board Member, But Were Not Reached. (See Paragraphs 2 Through 16 Of Mr. Fernandez's Memorandum; Attached As Item 4.a.)

  Not reached.
- 5. Discussion Relating To Investigation And Enforcement Authority Of The Miami-Dade County Commission On Ethics And Public Trust Pertaining To Alleged Violations Of Citizens Bill Of Rights, Sunshine, Public Records And Campaign Finance Laws. (See Attached Item 5.) Item Placed On The Agenda At The Request Of Alex Fernandez, Charter Review & Revision Board Member.) Not reached.
- 6. The Following Materials Were Requested By The Charter Review And Revision Board Of Staff During The May 6, 2013 Meeting:
  - a. Requirement That Employees Receive Annual Performance Evaluations (Attached As Item 6.a. Are The Applicable Sections Of The Personnel Rules And The Collective Bargaining Agreements With AFSCME, CWA, FOP, GSA And IAFF.)
  - Duties Of The Independent City Auditor (Attached As Item 6.b. Are Sections 2-251, 2-252 And 2-253 Of The City Code.)
     Not reached.

## 5:17:37 p.m.

**ACTION:** Chairman Zack requested to have an order for discussion for future agendas, and suggested the following:

- Discuss recommendations made by the City Attorney's Office
- Electing Officials by Open Seat Proponent Scott Diffenderfer
- Subpoena Powers Proponent Alex Fernandez
- Creation of an Inspector General with Investigative Powers Proponent Rick Kendle
- Requirement that all City employees be evaluated Proponent Chair Zack
- Citizen's Bill of Rights

Chairman Zack suggested that the Board members invite the public. Mr. Kendle suggested that the public needs to be heard from, from big developers to residents. Mr. Zack hopes that by having an agenda that can be published with the Mayor and Commissioners' newsletters; he would like to give the CRB items for discussion to advertise. Member Perry will advertise in The Miami Beach News. **Rafael E. Granado to handle.** 

#### PENDING ITEMS

List Of Proposed Charter Amendments Brought Forth For Discussion During The April 25, 2013 And May 6, 2013 Charter Review & Revision Board Committee Meetings, Which Have Yet To Be Fully Discussed:

- a. Term Limits For The Mayor And Commissioners (Charter Section 2.02) Proponent Commissioner Tobin
- b. Election Versus Appointment When Commission Vacancies Occur. (Referred At The May 19, 2012 Commission Retreat)
- c. Commission Salary (Referred At The May 19, 2012 Commission Retreat)
- d. Compensation Of The City Attorney, City Manager And City Clerk. (Referred At The May 19, 2012 Commission Retreat)
- e. Citizens' Bill Of Rights:
  - i. Article XV To Include Traffic Proponent Stephen Zack, Chair Chairman Zack suggested noticing this issue. Traffic is one of the most problematic issues in this community. The citizen's ability to drive in their own community is a fundamental right, especially during major events. It seems to him that residents' ability to use the roads have become severely compromised, and he wants to discuss the possibility of requiring any person or group who is going to hold an activity on Miami Beach to be required to have a traffic plan submitted with their request to protect the citizens in their ability to use the highways.

Vice-Chair Perry added that they have to be very careful not to discourage events on Miami Beach. They need to be cautious how they treat people who contribute to economic engine as Miami Beach becomes more competitive.

Member Fernandez explained major events plans in existence in the City, as far as outreach.

Jorge Gomez, Assistant City Manager, stated that during major events planning efforts are in place for traffic mitigation. The City is exploring and looking to enhance is for residents to have special hand tags to bypass checkpoints, occurring during these events to minimize the impact. Discussion continued.

Vice-Chair Perry explained that the focus should be connectivity between Miami Beach and Miami and this should be discussed, as well as better communications with FDOT.

Member Diffenderfer, also member of the Transportation & Parking Committee, agreed that the City is building places and is not managing traffic. A traffic component is necessary.

Discussion continued on traffic concerns and what is the maximum number of vehicles the various roadways can hold. The FDOT Alton construction was brought up and the lack of communication that exists in notifying the public. Assistant City Manager Jorge Gomez stated that this is called "level of service"; as a matter of policies City's Comprehensive Plan, the level has been set ad "D." The City needs to eventually face the fact that in order to improve mobility, they need to introduce other modes of transportation. The City is participating in a study, collaborating with the County and the State.

Member Diffenderfer explained that the City is in a dramatic situation, and the Commission is not taking this issue seriously; they need to react.

Chairman Zack stated that the Bill of Rights can include the right of a citizen to use its highways, and perhaps if the Commission is not willing to support, the residents insist.

Member Fernandez stated that this may be included with the Quality of Life, as there are many intricate planning components, such as Planning Board and Transportation and Parking Committee members who are experts. He suggested asking these experts for their recommendations to be sent to the Board that they can include as basic citizen's right. Member Lalonde concur. **Jorge Gomez and Saul Frances to handle.** 

**ACTION:** Motion made by Member Fernandez requesting recommendations from the Planning Board and the Transportation and Parking Committee and brings to future meetings; seconded by Chair Zack. No vote taken.

Debora Turner, First Assistant City Attorney, clarified that some of these committees are authorized to give advice to the City Commission directly and others to the Administration, but she will research to see if they can advise the CRB. **Ms. Turner to handle.** 

- ii. Ethics In Government / Code Of Conduct Proponent Stephen Zack, Chair
- iii. Over Scale Development In Residential Areas Proponent Stephen Zack, Chair
- iv. Preservation Of Beaches Proponent Rick Preira
- v. Mandate That Employees Should Be Courteous To Citizens In The Bill Of Rights Proponent Stephen Zack, Chair
- vi. Preserving The Historical Value Of Miami Beach Proponent Terry Bienstock
- vii. Whistle Blowing Protection For Employees Proponent Frank Del Vecchio In answering Chairman Zack's comments on whistle blowers and financial percentage received after lawsuits; Mr. Boksner explained that the City has an ordinance that an employee, vendor or contractor blows the whistle and allows the City to take action.

Member Fernandez suggested a memorandum be included with a future agenda for next month, with background, analysis and recommendations and for the public to comment on. **Alex Boksner to handle.** 

f. Electing Officials By Districts By Open Seats- Proponent Scott Diffenderfer Member Diffenderfer clarified that he suggested having the seat system revised, so that candidates do not run for specific seats, since they have no meaning and suggested substituting with By Open Seats.

g. Subpoena Powers - Proponent Alex Fernandez See comments in h.

# h. Creation Of An Inspector General With Investigative Powers - Proponent Rick Kendle

Aleksandr Boksner, Senior Assistant City Attorney, stated that if there is a contemplation that an Inspector General is something the CRB will want to pursue, it will eliminate the subpoena power. He needs to understand where the Board wants to go. Discussion held.

Member Fernandez clarified that he brought up Subpoena authority was in the context of the City Commission.

Mr. Boksner stated that subpoena power for the Commission should be eliminated if an Inspector General is brought in.

Discussion held regarding authority to issue subpoenas and creating an Inspector General in the Charter.

Member Kendle suggested creating an Office of Accountability.

Mr. Boksner stated that when the City Commission was contemplating entering into a contractual agreement with Miami-Dade County Inspector General's Office, the consensus in the City Attorney's Office is that this organization perpetuates itself, and they will continue to create issues to investigate. It has the ability to take its own life, and the ability to essentially branch itself out. He added that there is an existing false claims ordinance that has never been utilized by anyone. This is based upon someone billing the City for things they did not do, and it is an effective tool, since penalties are severe. He asked for guidance to proceed.

Discussion held. Member Fernandez clarified that to subpoena on issues that may merit correction, performance improvement, etc., but certainly not empowering elected officials to subpoena on issues of criminal nature. Discussion continued.

**ACTION:** Chairman Zack requested a recommendation from the City Attorney's Office as to whether this is necessary or not, and if the recommendation is to obtain Subpoena Power, whether it should go to the City Attorney, the City Commission or the Auditor General. He also requested that the City Attorney's Office reach out to State Attorney's Office regarding this issue. **Alek Boksner to handle.** 

 Requirement That All City Employees Be Evaluated On Recurring Basis – Proponent Stephen Zack, Chair Not reached.

Next meeting is scheduled for Monday, June 10, 2013 in the Commission Chambers.

Meeting adjourned at 6:36 p.m.